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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re I.I. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
CHILDREN & FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.A.,

Defendant and Appellant.

F057772

(Super. Ct. Nos. 07CEJ300199-1, 2,
3, 4)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,
Judge.

Catherine Campbell, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kevin Briggs, Interim County Counsel, and William G. Smith, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Vartabedian, Acting P.J., Cornell, J., and Gomes, J.

L.A. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to her four children.¹ She contends the court erred by not finding termination would be detrimental to the children. In her view, she had a continuing, beneficial relationship with them. On review, we affirm.

PROCEDURAL AND FACTUAL HISTORY

In August 2007, mother gave birth to her fourth child, J.B., who, along with mother, tested positive for methamphetamine. Mother had used methamphetamine throughout her pregnancy. J.B. was not, however, mother's first child to experience in-utero methamphetamine exposure. Two years earlier, mother tested positive for methamphetamine when she gave birth to her second child, J.I. Mother also exposed her children to her drug abuse by using drugs around the children in the home. Mother's ongoing and chronic methamphetamine and marijuana abuse negatively affected her ability to provide regular care, protection, and supervision to her four children, who then ranged in age from newborn, J.B. to three-year-old, I.I.

Consequently, respondent Fresno County Department of Children and Family Services (department) placed the children in protective custody and initiated the underlying dependency proceedings. The Fresno County Superior Court thereafter exercised its dependency jurisdiction (§ 300, subd. (b)) over the children and adjudged them dependents of the court as well as removed them from parental custody. The court also ordered a variety of reunification services for mother, including parenting classes, a substance abuse evaluation and recommended treatment, a mental health evaluation and recommended treatment, random drug testing, and reasonable supervised visitation.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Reunification Period

Mother made little or no effort to participate in services during the remainder of 2007 and the first two months of 2008. The one notable exception was visitation. The record contains family visitation reports dating back to September 2007. The visits occurred twice a week, for one hour at the Valley Teen Ranch “Bonding Home” (bonding home) where staff supervised the visits.

Mother cancelled, failed to appear, or came late for some visits in 2007 and early 2008 but otherwise attended many of the scheduled visits. She sometimes appeared overwhelmed trying to care for all the children and showing each of them attention. She also brought along her mother or another relative to help her care for the children during visits. Over time, mother developed a routine to her visits in which she first fed the children lunch and then played with them. The bonding home staff members who supervised the visits typically reported “visit went well.” The children appeared happy and comfortable around mother.

Mother’s failure to otherwise participate in reunification services came to a head in late February 2008 after she had been arrested for a theft-related crime and tested positive for high levels of marijuana and methamphetamine. She thereafter began to participate in the court-ordered services.

Meanwhile, in March 2008, the children’s foster mother reported a dramatic behavior change in the children following their departure from a visit. The three older children were very rebellious. They hit the foster mother with an open hand as well as hit each other. The two oldest children also had tantrums during which they threw themselves on the ground and were inconsolable. The foster mother thought mother made no attempt to redirect the children when their behavior was poor. Confronted with the children’s dramatic behavior change, mother admitted that while the children were in her care, she was not attentive to them and felt that was why their behavior was

incurable. However, mother denied that the children behaved in that manner during visits.

The eldest child, I.I., actually had been exhibiting these and other troubling behaviors since the outset of the dependency proceedings. There was a recommendation that he receive mental health therapy as early as September 2007. He did receive therapy starting in 2008.

In March 2008, his two younger sisters were also assessed as needing some form of attachment therapy. Although the foster mother met to the best of her ability the girls' emotional needs, the envisioned therapy would require the participation of a stable and consistent caregiver. Those evaluating the girls recommended delaying their therapy until either the court established a long-term placement for the girls or it was clear the biological parents were participating in services.

By the time of a May 2008 status review hearing, mother was making moderate progress towards reunification. At that point, she was on target to complete a three-month residential drug treatment program in late May. After that, she was willing to participate in a 90-day intensive, out-patient substance abuse program. Mother had also commenced mental health counseling and was actively participating.

The court consequently continued the children's out of home placement and mother's reunification services. It also gave the department the discretion to expand visitation.

After May 2008, however, mother backslid and essentially stopped participating in services. Although she offered a series of reasons to explain her lack of effort or progress, the court found many of her reasons were not credible. At best, she continued to consistently and regularly visit her children. The visits, which remained supervised and limited to two hours a week, appeared to be going well.

In November 2008, the court found mother failed to regularly participate in court-ordered services. Further, the court could not find that she made significant progress in resolving the problems that led to the children's removal from her custody. The extent of her progress had been moderate. The court consequently terminated reunification services for mother and set a section 366.26 hearing to select and implement a permanent plan for the children.

Department's Section 366.26 Report

In the meantime, the department filed a "366.26 WIC Report" in which it recommended that the court find each child adoptable and terminate parental rights. Because it is undisputed that the children are likely to be adopted, we need not summarize the department's evidence here.

The family's case manager who authored the report also summarized mother's current visits with the children in the following terms. The children were happy to see her and called her "mommy." She would warm up and serve their lunch. During lunch, the children wanted to get up and go play. Although mother asked them to sit and finish their lunch, the children told her no and the two eldest children would leave. The mother would defer, rather than try to stop the older children. In turn, the younger children would stop eating and say they wanted to play. Mother again would relent. During their play time, the children tried to play with toys that were not age appropriate. When mother tried to introduce a different toy, the children said no and she would allow them to play with the toys of their choice. As visits came to an end, the children asked her for candy as mother picked up the kitchen. After she cleaned the kitchen, she gave each child a "fun size candy."

Anticipating mother would claim she had a beneficial relationship with the children such that termination would be detrimental to them (§ 366.26, subd. (c)(1)(B)(i)), the case manager offered an opinion that there was no bond between the

children and mother. She noted mother had not cared for the children on a day-to-day basis and stated the children had not lived with mother for nine months. In fact, at the time the case manager wrote her report, the three older children had not lived with mother for 19 months and the youngest child never lived with mother.

The case manager also considered mother's parenting skills by looking at her ability to provide structure and nurturing as well as to challenge and engage the children during visits. Although mother had some limited skills, the children seemed to ignore her efforts and did as they pleased.

The court eventually conducted the section 366.26 hearing in June 2009. In the interim, and at mother's request, a bonding study between mother and the children was conducted. The court ordered the bonding study to also include the children's current caregivers.

Bonding Study

The psychologist who conducted the bonding study in April 2009, Laura Geiger, concluded the children did not have a parent-child relationship with mother. It was more like a relationship with an extended family member. The children exhibited defiance and "oppositonality" toward mother. They ignored and rejected her. They were also chaotic and disorganized in her presence. Mother's attempts to intervene neither calmed nor structured them. In Dr. Geiger's view, mother exhibited impaired skills in all four basic parenting measures, of structure, engagement, challenge, and nurturing. Dr. Geiger made this assessment during a structured observation of a series of tasks in which mother was supposed to engage the children. Mother appeared to realize her limitations and moved quickly from one task to another, trying to get through four of the tasks within 15 minutes. This was far shorter than average. At one point, the oldest child had a 20-minute screaming tantrum and mother's interventions with him were futile. By contrast,

the children's foster parents were able to exhibit the four basic parenting measures and their interventions brought order, calm, and emotional satisfaction to the children.

In addition, according to Dr. Geiger, the children did not have a substantial, positive emotional attachment to mother such that they would be greatly harmed if the relationship were terminated.

Trial

At trial, the department submitted its case for termination on its "366.26 report" and the bonding study. Mother took the witness stand and criticized the bonding study. In her opinion, the environment was small and uncomfortable. She and the children were only able to do the activities that the psychologist required. Once the oldest child started his tantrum it was hard to finish the activities the psychologist wanted them to do. He typically did not have tantrums during mother's visits. The part of the study that mother spent with the children was "like 35 minutes maybe."

Mother's counsel also questioned the case manager regarding her report and opinion that there was no parent-child bond. When she wrote her report in early March 2009, she had whatever visitation reports from the Bonding Home that were then available. Counsel in turn read excerpts from March 2009 visitation reports with favorable descriptions of the visits in terms of interactions and discipline.² The case manager agreed those descriptions were "almost 180 degrees different" from Dr. Geiger's descriptions. However, in the case manager's view, counsel had highlighted the strengths in mother's visits and overlooked other entries.

The case manager did agree that according to visitation reports dating back to the previous fall, the children were typically very happy to see mother and mother appropriately cared for them. Many, if not most, of the visitation reports also revealed

² The appellate record does not contain the March 2009 visitations reports or any subsequent reports.

the children are fighting. There were also numerous references in the reports to the children not listening to mother.

The case manager also supervised three or four visits. She noticed the children did what they wanted during visits. They eat when they want to eat. When they do not want to eat, they go play and mother follows. The children know when it is time to leave and start running out the door despite mother's request that they wait. As soon as she puts toys away and turns around, the children take the toys out of the toy box.

The foster parents did not display the same lack of control over the children that mother did. The children listened to the foster parents and there was a "huge difference" in how they responded.

The case manager agreed with Dr. Geiger's bonding study assessment. When she read the assessment, she was surprised there were so many similarities between her observations and those of the psychologist.

Closing arguments focused on the mother's claim that termination would be detrimental to the children based on her relationship with them during visitation. Upon submission, the court stated it read and considered the case manager's report and the bonding study, reviewed the case history and prior court determinations, listened to the testimony, and heard the attorneys' arguments. The court specifically mentioned the evidence that the visits went well. However, the court noted that the happy visits added nothing to elevate the evidence to prove a significant parent-child relationship that would outweigh the benefit of adoption. The court found the bonding study description of an extended family member relationship between mother and the children was consistent with the evidence of happy or good visits. The court also noted both the case manager and the psychologist came to very similar, yet independent conclusions. The court thereafter found the children likely to be adopted and ordered parental rights terminated.

DISCUSSION

Mother contends the court refused to consider all of the evidence before it on the issue of whether the beneficial relationship exception applied. According to her, the court only considered the opinions of the case manager and Dr. Geiger, which mother characterizes as insubstantial and worthless, respectively. In mother's view, the case manager's opinion was insubstantial because she was unfamiliar with mother's ongoing relationship with the children while Dr. Geiger's opinion was worthless because she only observed mother and the children together for 40 minutes and never read the visitation reports. Without these opinions, mother argues, there was no evidence to support a finding that the children would not benefit substantially from continuing their relationship with her.

Mother's argument fails for several reasons, not the least of which is the record does not support her claim of error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [It is appellant's burden to affirmatively show error on the record].) The court did not refuse to consider all of the evidence or limit its consideration of mother's argument to only the case manager's and Dr. Geiger's opinions. In fact, the court expressly stated it read and considered the case manager's report and the bonding study, reviewed the case history and court's determinations, listened to the testimony, and heard the attorneys' arguments. It also specifically mentioned the visitation records upon which mother relies.

To the extent mother criticizes the opinions of the case manager and Dr. Geiger as respectively insubstantial and worthless, she essentially invites this court to reweigh the evidence in her favor. However, that is not within this court's authority. As a reviewing court, we may not reweigh or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) Issues of fact and credibility are matters for the trial court alone.

In addition, it was mother's burden in the trial court to show that termination would be detrimental. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) It was not the department's burden to prove the negative. A finding of no detriment is *not* a prerequisite to the termination of parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) If, as in this case, the children are likely to be adopted, adoption is the norm. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Mother did maintain regular visitation with the children and her visits were happy experiences for the children. However, the beneficial relationship exception (§ 366.26, subd. (c)(1)(B)(i)) required much more. Since contact between parent and child generally confers some benefit on a child, the parent must demonstrate more than pleasant visits or frequent and loving contact. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.) For the beneficial relationship exception to apply,

“the parent-child relationship [must] promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court must therefore: ‘balance [] the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.’ (*Id.* at p. 575.)” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

Here, mother introduced no evidence that terminating parental rights would deprive these children of a substantial, positive emotional attachment such that the

children would be greatly harmed. The court consequently did not abuse its discretion by rejecting her argument. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

DISPOSITION

The order terminating parental rights is affirmed.